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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,123	06/30/2000	Paul E. Jacobs	PA000099	1944

23696 7590 05/14/2004

Qualcomm Incorporated
Patents Department
5775 Morehouse Drive
San Diego, CA 92121-1714

EXAMINER	
ALVAREZ, RAQUEL	
ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	09/609,123	JACOBS ET AL.	
	Examin r	Art Unit	
	Raquel Alvarez	3622	

-- The MAILING DATE of this c mmunication appears on the c ver sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,11-13,46-52,118,149,154,156,158-162,170,294,296 and 313-319* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,11-13,46-52,118,149,154,156,158-162,170,294,296 and 313-319* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This office action in response to communication filed on 3/8/2004.

2. Applicant elected claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40, 111-113, 126-127, 136-137 and 146 of copending Application No.09/679,039. Although the conflicting claims are not identical, they are not patentably distinct from each other because the co-pending application further recites transmitting ad-statistical data. Calculating and transmitting statistical data it is old and well known in business in order to calculate and transmit statistical data in order to make educated assumptions and statements on a particular subject. It would have been obvious to a person of ordinary skill in the art at the time of

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Applicant's invention to have included transmitting ad-statistical data in order to achieve the above mentioned advantage.

4. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of copending Application No.09/679,038. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application further recites an ad link history display window that lists links to the sources of advertisements that the user has previously visited. Listing the sources of advertisements or information that the user has previously visited it is old and well known in order to keep track of the success of the different sources of advertisements. It would have been obvious to a person of ordinary skill in the art at the time of the invention to have included a display window that lists links to the sources of advertisements that the user has previously visited in order to achieve the above mentioned advantage.

5. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-51 of copending Application No.09/728,693. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application further recites that the advertisement download communication link and the data communication link are separate communication links. It is old and well known in the communication and networking arts to have various communication links because such a modification would

Applicant's invention to have included transmitting ad-statistical data in order to achieve the above mentioned advantage.

4. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of copending Application No.09/679,038. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application further recites an ad link history display window that lists links to the sources of advertisements that the user has previously visited. Listing the sources of advertisements or information that the user has previously visited it is old and well known in order to keep track of the success of the different sources of advertisements. It would have been obvious to a person of ordinary skill in the art at the time of the invention to have included a display window that lists links to the sources of advertisements that the user has previously visited in order to achieve the above mentioned advantage.

5. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-51 of copending Application No.09/728,693. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application further recites that the advertisement download communication link and the data communication link are separate communication links. It is old and well known in the communication and networking arts to have various communication links because such a modification would

allow for easier transmission of data. It would have been obvious to a person of ordinary skill in the art at the time of the invention to have link are separate communication links in order to achieve the above mentioned advantage.

6. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 and 51-53 of copending Application No.09/668,553. Although the conflicting claims are not identical, they are not patentably distinct from each other because the co-pending application further recites transmitting ad obscured ad monitor function that determines whether an obscured ad condition has occurred, whereby the obscured ad condition occurs when an advertisement current being displayed on the display associated with the client device is being obscured by one or more other items currently being displayed on the display and an obscured nag function that generates an obscured ad nag display in response to detection of the obscured ad condition, wherein the obscured nag display notifies the user of the obscured ad condition. Since, monitoring and displaying various advertisements which can occupy the entire portion of the display along with banner advertisements is obvious in on-line advertisements then it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included detecting if a displayed advertisement such as a banner advertisements is being obscured by an advertisement and notifying the user in order for the user to be aware that might not be compensated for viewing the banner advertisements that is being obscured by the advertisement.

7. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 18-33, 59 and 62 of copending Application No.09/668,331. Although the conflicting claims are not identical, they are not patentably distinct from each other because the co-pending application further recites a playlist that identifies the advertisements to be downloaded. Identifying or selecting the advertisements to be downloaded is obvious and well known in order to provide some sort of order within the system. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included transmitting ad-statistical data in order to achieve the above mentioned advantage.

8. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 46-70 and 74-76 of copending Application No.09/668,632 Although the conflicting claims are not identical, they are not patentably distinct from each other because the co-pending application further recites an e-mail function for receiving and sending e-mail to other client devices. Sending and receiving e-mail to other clients is old and well known in the computer related arts in order to receive messages immediately from other clients . It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included receiving and sending e-mail messages in order to achieve the above mentioned advantage.

9. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319

are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 36-70, 74-76 and 78 of copending Application No.09/668,515.Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application further recites three operating modes. Different operating modes such as Online and offline operating modes are known in the computer related arts in order to provide different states of the program. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included receiving and sending e-mail messages in order to achieve the above mentioned advantage.

10. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,9-11,14-24,43,45-54,77-79,81,82,84,86-92,94,95,97-105,107-109 and 111 of copending Application No.09/668,631. Although the conflicting claims are not identical, they are not patentably distinct from each other because the co-pending application further recites a playlist that identifies the advertisements to be downloaded. Identifying or selecting the advertisements to be downloaded is obvious and well known in order to provide some sort of order within the system. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included transmitting ad-statistical data in order to achieve the above mentioned advantage.

11. Claims 1, 11-13, 46-52, 118, 149, 154, 156, 158-162, 170, 294, 296 and 313-319 are provisionally rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claims 1-53 of copending Application No.09/668,600. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application further recites a third operating mode in which the software switches the operating from a first operating mode to a second operating mode, wherein the second operating mode has less features than the first operating mode. Official notice is taken that it is old and well known in the computer related arts to switch from one operating mode to another operating mode that has less features when a problem arises with one of the operating mode because such a modification would allow the software to operate with less features and in that case less problems are less likely to occur. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included switching from a first operating mode to a second operating mode, wherein the second operating mode has less features than the first operating mode in order to obtain the above mentioned advantage.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claim 149 depends from canceled claim 135. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation m of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1, 11, 12, 46-52, 170, 294, 296, 313, 314-319 are rejected under 35 U.S.C. 102(b) as being anticipated by Marsh et al. (5,848,397 hereinafter Marsh).

With respect to claims 1,11, 46-52,170, Marsh teaches software for use on a client device that is configured for communication with a multiplicity of other client devices via a communication network (Figure 8). A communication that effects: a send e-mail link between the client device and an e-mail service provider server system via the communications network whenever the user desires to send e-mail messages (Figure 4); a receive e-mail communication link between the client device and the e-mail service provider system whenever the user desires to check for received e-mail messages (Figure 4); an advertisement download communication link between the client device and an advertisement distribution server system via the communications system, at selected advertisement download times (col. 3, lines 28-37); an e-mail composition function for enabling a user of the client device to compose e-mail messages (Figure 4); an e-mail send function that enables the user to send e-mail messages to other client devices via the send e-mail communication link (Figure 4); an e-mail receive function that enables the user to send e-mail to receive e-mail messages from other client devices via the receive e-mail communication link (Figure 4); and an advertisement download function that downloads advertisements from the advertisements from the advertisement distribution server system via the advertisement

download communication link (Figure 8) ; wherein the e-mail service provider system and the advertisement distribution server system are separately controlled (Figure 8).

With respect to claim 12, Marsh further teaches controlling the display of the stored advertisements in accordance with ad display parameters prescribed by the advertisement distribution server system, which ad display parameters are unknown to the e-mail service provider (i.e. the advertiser 108 determines the ads to be sent to the client computer 101, the e-mail service provider 107 not known to the e-mail service provider)(Figure 8).

With respect to claim 294, 296, 313,314, 315, Marsh teaches software for use on a client device that is configured for communications via a communication network (Abstract). A play list request function that generates a play list request, and that transmits the play list request to at least one play list server, via the communications network (Figure 8 and col. 15, lines 1-10); a play list response handling function that receives and processes a play list response transmitted to the client device by the at least one play list server in response to the play list request, wherein the playlist response includes a playlist that identifies advertisements to be downloaded (col. 15, lines 1-10); wherein the playlist response includes at least one new playlist that includes a plurality of ad identifiers that identify corresponding advertisements, a plurality of addresses that identify the source of respective ones of the advertisements, and at least one new playlist ID that identifies the at least one new playlist (Figure 8).

With respect to claim 316, Marsh further teaches that the selected advertisement download times span a plurality of online e-mail sessions during which the client device is online for purpose of sending and/or receiving e-mail messages (i.e. Showcase ads are invoked when Online)(col. 7, lines 1 to col. 8, lines 1-11).

With respect to claim 317-318, Marsh further teaches that a playlist request interval data field that specifies the prescribed playlist check interval (col. 15, lines 1-10).

With respect to claim 319, Marsh further teaches that the prescribed playlist check intervals span a plurality of online e-mail sessions during which the client device is online for the purpose of sending and/or receiving e-mail messages (Figure 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. Claims 13, 118, 149, 156 and 158-162 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsh.

With respect to claim 13,Marsh further teaches at least one of the ad display parameters is a face time duration parameter that specifies a face time duration for at least one of the stored advertisement (col. 3, lines 28-36) and the step of displaying at

least selected ones of the stored advertisements comprises displaying the at least one of the stored advertisements for the face time duration prescribed by the associated face time duration parameter (col. 3, lines 28-36).

With respect to the face time duration comprising a time period during which at least a prescribed minimum level of user activity is detected. Since Marsh teaches maintaining information on the user activity and interactivity with the advertisements (col. 14, lines 66-, col. 15, lines 1-7) then it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included using the user activity of Marsh to determine the face time duration of the advertisements during which at least a prescribed minimum level of the user activity is detected because such a modification would help in determining and better targeting the ads based on the user's activity.

Claims 118 further recite a set of e-mail operating in a first operating mode and a second e-mail feature operating in a second operating mode and switching the operating from a first operating mode to a second operating mode, wherein the second operating mode has less features than the first operating mode. Official notice is taken that it is old and well known in the computer related arts to switch from one operating mode to another operating mode that has less features when a problem arises with one of the operating mode because such a modification would allow the software to operate with less features and in that case less problems are less likely to occur. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to

have included switching from a first operating mode to a second operating mode, wherein the second operating mode has less features than the first operating mode in order to obtain the above mentioned advantage.

With respect to the third operating mode in which the advertisement download function is not activated and the software not being free in this mode. Official notice is taken that it is old and well known for products or services not to be free when a customer doesn't receive advertisements in order to motivate the customers to change to a different mode in order to receive the free products or services. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included a third operating mode in which the advertisement download function is not activated and the software not being free in this mode in order to achieve the above mentioned advantage.

Claim 149 further recites a switching function that switches the operating mode upon expiration of a maximum ad display failure time and notifying the user if the user doesn't take corrective action. Switching an operating mode when maximum failures have occurred and notifying the user if the user doesn't take corrective action it is obvious and well known in the computer related arts. For example, when a user makes various attempts to enter a password and the incorrect password is entered, the system would notify the user that he will be working offline if the correct password is not entered. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included a switching function that switches the operating

mode upon expiration of a maximum ad display failure time in order to obtain the above mentioned advantage.

Claims 154 and 156 further recites a counter for every time that the advertisements are not successfully downloaded. Official notice is taken that it is old and well known to have a counter for keep track of an action. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included a counter for every time that the advertisements are not successfully downloaded in order to obtain the above mentioned advantage.

Claims 158-160 further recite the time period in which the operating mode is changed based on certain conditions. Official notice is taken that is old and well known to change from one operating mode to the other when certain conditions occur. For example, an operating system will change from an online to an offline conditions were certain defects are found. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included the time period in which the operating mode is changed based on certain conditions in order to achieve the above mentioned advantage.

With respect to claim 161-162, Marsh teaches software for use on a client device that is configured for communications with at least one remote source of advertisements via a communications network (Abstract). An advertisement download function that

downloads advertisements from at least one remote source, during one or more advertisements download sessions (see figure 4, item 601); an advertisement store function that stores the download advertisements on a storage medium associated with the client device (col. 14, lines 1-10); an advertisement display function that effects display of at least selected ones of the stored advertisements on a display associated with the client device (Figure 6, 702).

With respect to an ad obscured ad monitor function that determines whether an obscured ad condition has occurred, whereby the obscured ad condition occurs when an advertisement current being displayed on the display associated with the client device is being obscured by one or more other items currently being displayed on the display and an obscured nag function that generates an obscured ad nag display in response to detection of the obscured ad condition, wherein the obscured nag display notifies the user of the obscured ad condition. Since, Marsh teaches monitoring and displaying various Showcase which can occupy the entire portion of the display along with banner advertisements (col. 7, lines 66-, col. 8, lines 1-30) then it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included detecting if a displayed advertisement such as a banner advertisements is being obscured by a Showcase advertisement and notifying the user in order for the user to be aware that might not be compensated for viewing the banner advertisements that is being obscured by the Showcase advertisement.

Point of contact

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (703)305-0456. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric w Stamber can be reached on (703)305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Raquel Alvarez
Examiner
Art Unit 3622

R.A.
5/12/04